

1 Dawn L. Davis, Esq.
Nevada Bar No. 13329
2 SNELL & WILMER L.L.P.
3883 Howard Hughes Parkway, Suite 1100
3 Las Vegas, Nevada 89169
Telephone: (702) 784-5200
4 Facsimile: (702) 784-5252
Email: ddavis@swlaw.com

5 Jonathan P. Hersey, Esq.
6 (*pro hac vice application forthcoming*)
Lea E. Gierut, Esq.
7 (*pro hac vice application forthcoming*)
K&L GATES LLP
8 1 Park Plaza, 12th Floor
Irvine, California 92614
9 Telephone: (949) 253-0900
Facsimile: (949) 253-0902
10 Email: jonathan.hersey@klgates.com
lea.gierut@klgates.com

11 *Attorneys for Defendants*
12 *John Duff III, Henry Smith, and*
13 *Maxwell Roux*

14 UNITED STATES DISTRICT COURT
15 DISTRICT OF NEVADA

16 KRISHNA OKHANDIAR, an individual, and
17 REMILIA CORPORATION LLC, a Delaware
limited liability company,

18 Plaintiffs,

19 v.

20 JOHN DUFF III, an individual,
21 HENRY SMITH, an individual, and
MAXWELL ROUX, an individual,

22 Defendants.
23
24
25
26
27
28

Case No. 2:23-cv-1409- APG-EJY

**DECLARATION OF JONATHAN P.
HERSEY IN SUPPORT OF
DEFENDANTS' MOTION TO DISMISS
PURSUANT TO FED. R. CIV. P. 12(b)(2)
& 12(b)(3), OR ALTERNATIVELY TO
TRANSFER PURSUANT TO 28 U.S.C.
§§ 1406(a) OR 1404(a)**

DECLARATION OF JONATHAN P. HERSEY

I, Jonathan P. Hersey, declare:

1. I am a partner with the law firm of K&L Gates LLP, attorneys for defendants John Duff III, Henry Smith, and Maxwell Roux (“Defendants”). I am over the age of eighteen and make this declaration based on my personal knowledge. I submit this declaration in support of Defendants’ Motion to Dismiss Pursuant to Fed. R. Civ. P. 12(b)(2) or 12(b)(3), or Alternatively to Transfer Pursuant to 28 U.S.C. §§ 1406(a) or 1404(a). I am competent to testify to the matters set forth in this declaration, and would do so competently if called to testify thereto.

2. Attached hereto as Exhibit 1 is a true and correct copy of the Entity Information report for Remilia Corporation LLC that I accessed from the Nevada Secretary of State’s SilverFlume Business Portal online at <https://esos.nv.gov/EntitySearch/BusinessInformation>, and which I printed on January 12, 2024. The report shows that Remilia Corporation LLC, a Delaware company, did not report its existence and plans to do business in the state of Nevada to the Nevada Secretary of State until November 15, 2023.

3. On August 22, 2023, I sent a demand letter on behalf of Defendants to Mr. Okhandiar and Remilia Corporation LLC at what Defendants believed was Mr. Okhandiar’s address located at 50 E. 26th Street, Apt. #220, in Chicago, Illinois. I also sent a copy of the letter to Remilia Corporation LLC’s agent for service of process, ZenBusiness Inc., located at 611 South Dupont Highway, in Dover, Delaware.

4. On August 25, 2023, I received an email from an attorney David Fritz with the law firm of Boyarski Fritz in New York saying that he and his firm represent Remilia Corporation LLC and would be reaching out to me early the following week regarding my letter.

5. On August 30, 2023 at 8:54 a.m., I emailed Mr. Fritz to ask if I could expect to receive his response that day or if there was some other reason my clients should hold off pursuing their claims in court. Mr. Fritz wrote me back less than 30 minutes later saying that “we are finalizing our comprehensive response to your letter with supporting exhibits to dispute the allegations made by your clients.” No further response was received from Mr. Fritz. Instead, at 6:03 p.m. that night, I received an email from Steven Joffe, an attorney with the law firm of Michael

1 Best & Friedrich LLP, saying that his firm now represents both Remilia Corporation LLC and Mr.
2 Okhandiar, and requesting a phone call with me the following day. We scheduled a call for 1:30
3 p.m. the following day.

4 6. About an hour before the call, I received a letter from Mr. Joffee. While the letter
5 asserted certain claims against Messrs. Duff, Smith and Roux, it did not address any of the issues
6 raised in my August 25, 2023 letter. Mr. Joffee's letter did not say that Mr. Okhandiar had moved
7 to Nevada. Likewise, it did not say that the Chicago address to which I had mailed my letter to Mr.
8 Okhandiar and Remilia Corporation LLC was incorrect; or that Remilia Corporation LLC's agent
9 for service of process (ZenBusiness, Inc.) was not located in Delaware.

10 7. Several of my colleagues and I spoke with Mr. Joffee and several of his colleagues
11 at 1:30 p.m. on August 31, 2023. Again, neither Mr. Joffee nor his colleagues informed us that Mr.
12 Okhandiar now lived in Nevada or that Remilia Corporation LLC supposedly had its principal place
13 of business there. I informed Mr. Joffee and his colleagues that while his letter made certain
14 demands, it failed to address any of the issues raised in my prior letter. Mr. Joffee and his colleagues
15 informed me that they were preparing a separate response to my letter, and they requested that
16 while waiting for that response we not file a lawsuit or make our complaints about Mr. Okhandiar
17 public because of the potential impact that a public dispute could have on the business. They also
18 asked us to consider a confidential pre-lawsuit mediation, and then if necessary, private and binding
19 arbitration.

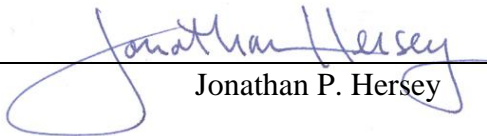
20 8. On September 11, 2023, while we were still waiting for Mr. Okhandiar's and
21 Remilia Corporation LLC's response to our letter and to further discuss the possibility of mediation,
22 they filed their complaint in this Court without any further notice.

23 9. On September 19, 2023, Defendants filed their own complaint against Mr.
24 Okhandiar, Remilia Corporation LLC, and Remilia Industries LLC in the Court of Chancery for
25 the State of Delaware. The initial filing was rejected and withdrawn because of an issue with the
26 caption and the need to refile certain documents under seal. It was refiled on September 22, 2023
27 and assigned C.A. No. 2023-0961. Mr. Okhandiar and his two companies, now defendants in that
28 Delaware action, snap-removed the case to the Delaware federal district court on September 27,

1 2023. It is pending as Case No. 1:23-cv-01056-GBW.
2

3 I declare under penalty of perjury under the laws of the United States of America that the
4 foregoing is true and correct.

5 Executed this 16th day of 2023, at Irvine, California.
6

7 
8 Jonathan P. Hersey
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I hereby certify that on January 18, 2024, I electronically filed the foregoing **DECLARATION OF JONATHAN P. HERSEY IN SUPORT OF DEFENDANTS' MOTION TO DISMISS PURSUANT TO FED. R. CIV. P. 12(b)(2) & 12(b)(3), OR ALTERNATIVELY TO TRANSFER PURSUANT TO 28 U.S.C. §§ 1406(a) OR 1404(a)** with the Clerk of Court for the U.S. District Court, District of Nevada by using the Court's CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the CM/ECF system.

/s/ Lyndsey Luxford

An employee of SNELL & WILMER L.L.P.

4853-5705-2830

Snell & Wilmer
LLP
LAW OFFICES
3883 Howard Hughes Parkway, Suite 1100
Las Vegas, Nevada 89169
702.784.5200